

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





75 - 7063

15-7063  
MAR 3 1975

To be argued by  
Silas Rappner, Pro Se

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United States Court of Appeals  
For The Second Circuit  
Docket No 75 - 7063

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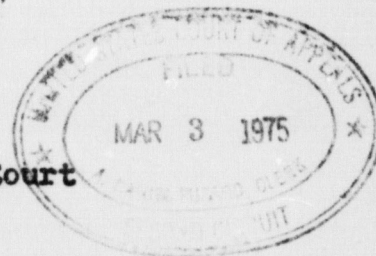
SILAS RAPPNER,  
Appellant

-V-

CASPAR WEINBERGER, Secretary of  
Department of Health, Education  
and Welfare.  
Appellee

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On Appeal From The United States District Court  
For The Southern District Of New York.



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BRIEF ON BEHALF OF PLAINTIFF - APPELLANT

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Silas Rappner, Pro Se  
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Brief On Behalf Of  
Plaintiff - Appellant  
Docket No 75 - 7063  
Silas Rappner, Pro Se

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Preliminary Statement.

District Court-Honorable H.F.Werker erred as a matter of law in his December 10, 1974 decision and order to remand the years 1958, 1959 and 1960 to the Secretary as indicated on page 5-par.2 of the Memorandum Decision and Order dated December 10, 1974.

On the last page(i.) of the Decision of Dec.10, 1974 under caption of "Notes" refers to Sept.3, 1974 plaintiff's motion, under Rule 12(f) of Federal Rules of Civil Procedure, moved to Strike Defendant's Motion for Summary Judgment accompanied by a Memorandum of Law, on the grounds that said defense fails to state a legal defense to the claims set forth in the complaint herein.

The grounds for appeal from the decision and order of December 10, 1974 by the district court-Honorable H.F.Werker are pursuant to Social Security Act 205(h), Title 42 USC 405(h), 20 (C.F.R.) 404.937.

Where there has been a previous decision by a U.S. District Court with respect to the rights of the same party on the same facts pertinent to the same issue which has become final by judicial affirmation, then the doctrine of



Res Judicata that one judicial contest is enough for litigants on a particular claim.

A civil court adjudication may preclude relitigation of an issue which has become final by judicial affirmance.

C.A.1973 Social Security benefit claims would not be reopened either under Social Security Act or Administrative Procedure Act.

5 U.S.C. 701

42 U.S.C. 405(h)

Stucky V Weinberger  
488 F2d 904

Wallace V Weinberger  
488 F2d 606

Therefore plaintiff contends that the statutes of the Social Security Act and the statute regulations of the government agency prohibit continued litigation of an issue that had final adjudication by a U.S.District Court and therefore the order to remand should be vacated in furtherance of justice.

The issue is the total amount of credited wages on Secretary's record for 1951-1961, and underpayments arising therefore.

On September 24, 1973 the Honorable M.I. Gurfein, District Court Judge called for a pre-trial conference procedure to formulate the real issues in the case of Rappner V Weinberger

73 Civ 598.

The issue was the material documentary evidence on pages 16-22 of the certified transcript of the proceedings, relating to the wage earnings of the plaintiff for the years 1958, 1959 and 1960. The existing fact in dispute was the material documentary evidence in possession of the Appeals Council under the defendant Secretary of H.E.W. for a period of over seven months.

Judge Gurfein on October 29, 1973 ruled that the documentary evidence was admissible and then endorsed the Amended Complaint.

The plaintiff amended the complaint because it was necessary to set forth more clearly the issue of the total amount of credited wage earnings for the benefit computation years from 1951 to 1961.

In this matter the burden of persuasion of a fact meant the burden which is discharged when the court which determines the existence of the fact is persuaded by sufficient evidence to find that the fact exists. And so the amended documentary evidence for the years 1958, 1959 and 1960 has been adjudicated by the District Court Judge, the Honorable Murray I. Gurfein, now a member of the United States Court of Appeals.



## Statement Of Facts

### Plaintiff-Appellant Case:

Detailed pleadings in the brief is unnecessary since detailed factual information can be obtained through the reading of the December 10, 1974 district court decision and order, docket sheet, parts of transcript.

The plaintiff disagrees with the allegations in the December 10, 1974 decision and order of the district court and is the basis of the Appeal to this court, as indicated in the preliminary statement.

Pleadings should do little more than indicate the type of litigation that is involved so that both the plaintiff and the defendant may have fair notice of the claim and defense. There should be <sup>no</sup> pretense nor sham.

In this case there is no genuine issue as to any material fact; only a question of law is presented and judgment should go for the moving party if he is so entitled.

Similar principles govern the situation when matters outside the pleadings are presented to the court such as a motion to dismiss for failure to state a claim, or for judgment on the pleadings since under Rule 12 of the Federal Rules of Civil Procedure, it is treated as one for Summary Judgment.

Rule 15 amended pleadings under Federal Rules of Civil Procedure should not be considered an end in themselves but as

a means to the proper presentation of a case. The objective of pleadings is to assist in the disposition of litigation on the merits.

If an amendment of a complaint is necessary to set forth more clearly the issue, a party should be granted an opportunity to reframe the complaint, especially as in this case when material documentary evidence relating to the benefit computation years from 1951 to 1961, pursuant to the provisions and statutes of the Social Security Law (evidence) has been in possession of the defendant at the defendant's request since 1972.

The defendant issued on May 23, 1973 a certified transcript of the proceedings of this case signifying a final decision and exhaustion of administrative remedies as provided by 5 U.S.C. par. 701.

However, in this case the plaintiff had not exhausted his legal remedies on December 10, 1974 when the district court made its decision.

The court had not in any manner notified the plaintiff who had as much right as the defense counsel to have a dialogue with the court or its staff members pending decision as to the following procedures.

As detailed under Preliminary Statement, the district court procedures involve questions of law which only the Appeals Court has the exclusive remedy to interpret in the application of the law to the facts.

The plaintiff has testified under oath in the hearings before the examiner in 1971 and the Appeals Council in 1972 (Tr. 85)



that he had information from a nameless lawyer employed by the social security administration that under the Benefit Computation years from 1951 and the elapsed years to and (TR.125) including 1961,excluding 1960,the year in which plaintiff attained age 65,minus 5 years of lowest earnings. (TR.133)

The lawyer further explained that the plaintiff was entitled as a fully insured beneficiary pursuant to the Social Security Law amendments of 1960 and 1961 to old age insurance benefits based on total wages credited and posted in the records of the Secretary,and computed in accordance with the statutes of the Social Security Act.

The Appeals Council suggested to the plaintiff that he submit within 15 days any documentary material evidence (TR.133) relative to the matter.Such evidence was mailed to the Appeals Council within the stipulated time and has been in possession of the defendant since that time in 1972. The transcript records the evidence on pages 16-22. (SEE A15)

The plaintiff,Silas Rappner,filed application for retirement benefits on October 30,1961 and became entitled to retirement insurance benefits,effective October 1960, plaintiff received in 1962 for the first time,\$50 monthly benefit. Plaintiff was born August 2,1895.

The total wages of the benefit computation years from 1951 to 1961,pursuant to the Social Security Amendments of 1960 and 1961,are computed in accordance with the provisions

and statutes of the Social Security Act, result in a benefit of \$80 monthly.

42 U.S.C. Sec. 415 and 215.

The failure of the defendant to compute the total earnings of plaintiff credited and posted on the records of the Secretary is in direct disregard of the Statutes of the Social Security Act and therefore is invalid.

Misinterpretation of a statute has been held to violate the purposes of the Social Security Act.

#### Computation And Amount.

The amount of benefits to which an individual is entitled; and the computation thereof is determined by the provisions of the statute relating thereto and under such provisions the amount of benefits is made to depend on the total wages or earnings which the insured individual has received or made and the periods in which they were made.

Erickson V S.S. Board 149 Fed 270

Person by reason of the failure of the employer (unknown to the employee) who failed to report to the Social Security Administration the amount deducted for social security taxes and in such circumstances, notwithstanding the expiration of the specified time, the Social Security Administration could receive the records of employment and make them official.

U.S. Ewing V Black



In this connection the courts will give effect to a regulation providing for constructive payment of wages (or commissions) where there is an intention by the employer to pay or set apart wages due to error or inadvertence.

Emlen V S.S. Administration D.C. Pa 54 F Supp 498  
Affirmed C.A. 148 F2d 927

The proper and legal interpretation of the application of the statutory provisions of the Social Security Act to the computation of the total earnings of the benefit computation years to obtain the proper monthly benefit "goes right to the guts of the matter."

(Title 28) Provisions of Sec. 2416 shall not prevent the assertion in an action against the government agency of social security old age insurance past due underpayments claim supported by substantial evidence.

20 (C.F.R.) 404.503 -Social Security Administration regulation that underpayment of claims of old age insurance benefits can be asserted by a fully insured old age beneficiary, with absence of any disability "no fault" individual still living.

Social Security Act-42 U.S.C. as amended Sec.303(a)  
and Sec.215(b).

The number of years starting with 1951 to and including 1961 is determined on an individual year basis; each year for which the beneficiary is credited with wages is a year of coverage; and his benefit computation years shall be equal to the number of elapsed years reduced by 5 years of no or lower earnings excluding the year 1960 (attained age 65) for the purpose of paragraph(2) an individual's elapsed years shall be the number of calendar years including the first year after December 31, 1960, in which he was both fully insured and had attained retirement age with an absence of disability; the divisor is 60 months and the quotient is the average monthly wage which converts to the primary insurance amount utilizing applicable conversion table (see exhibit A10)

Pursuant to

Public Law 86-778 Amendment of 1960-Sept.13, 1960

Public Law 87-64 Amendment of 1961-June 30, 1961.

Acts to extend and improve coverage under Federal Old Age insurance system and remove hardships.

Hall V Fleming D.C. 205 F Supp 770



Judge Gurfein adjudicated affirmatively on Oct.29,1973 (Docket Sheet) the material documentary evidence in the transcript pages 16-22 (exhibit A15) relating to 1958,1959 wages on the amended complaint.

Total Wages of Plaintiff credited on the Secretary's records (exhibit A 18) for the Benefit Computation Years from 1951 to and including 1961 and excluding 1960(attained age 65).

1951 - \$ 777 page 165 of transcript exhibit A 18.

1952 - \$ 781 page 165 of transcript exhibit A 18.

1958 - \$ 860 page 165 of transcript exhibit A 18.

1959 - \$1606 page 165 of transcript exhibit A 18.

\$ 275 page 165 of transcript exhibit A 18.

\$ 806 page exhibit A 11.Credited 1960 but earned 1959.

1961 - \$3786 page 165 of transcript exhibit A 18

\$8891 Total Wages of Plaintiff

$$\frac{\text{Total Wages}}{\text{Divisor}(60)} = \text{Average Monthly Wage which is converted to Primary Insurance Amount(PIA) using applicable Conversion Table(exhibit A 10)}$$

Computed according to Statutory Regulations.

$$\frac{\$8891}{60} = \$148.2 \text{ (average monthly wage)}$$

converted to PIA equals \$89 which is monthly benefit.

~~Gray V Finch 427 F2d 986~~

# EXHIBIT A16 BENEFITS REC'D FROM SS ADMIN.

Year	Annual Benefits Received	Annual Underpayments of Benefits	Proper Annual Benefits
1960	\$ 207	\$ 60	\$ 267
1961	828	240	1068
1962	828	240	1068
1963	828	240	1068
1964	828	240	1068
1965	886.8	252	1138.8
1966	886.8	252	1138.8
1967	912	252	1164
1968	1030	252	1282
1969	1030	252	1282
1970	1188	288	1476
1971	1308	312	1620
1972	1392	336	1728
1973	1560	296	1856
1974	1725	414	2139
	<u>\$15437.60</u>	<u>\$3926</u>	<u>\$19363.60</u>

The sum of \$3926 is the difference of past due underpayments of old age insurance benefits between the benefits received and the benefits the plaintiff should have received retroactively pursuant to the statutes of the Social Security Law and Administrative Agency regulations.

42 U.S.C. Sec.205(b) and 20(C.F.R.) 404.503.

~~U.S. Circuit V S.S. Board G.A. 128 F 2d 876~~



## ARGUMENT

### POINT 1

Rule 15(a) Federal Rules of Civil Procedure.

Amended pleadings by leave of court are necessary to cause them to conform to the evidence and to raise the issues, and in this case since the issue of the documentary material evidence relating to the benefit computation years wages, particularly the years 1958, 1959 and 1960 were existing facts inscribed upon the pages of the certified transcript, after the plaintiff had testified under oath in 1972 before the Appeals Council in Alexandria, Va.

Benefit Computation years 1951-1961.

The Congressional amendments of the Social Security Law,  
Public Law 86-778 Sept. 13, 1960

Public Law 87- 64 June 30, 1961.

To extend and improve coverage under the Federal Old-Age  
survivors Insurance System and to Remove Hardships and Inequities.

Computations.

Sec. 303(a) Section 215(b)

An individual average monthly wage shall be the quotient  
obtained by dividing

(A) the total of his wages paid in and credited to his benefit  
computation years which in 1951

~~Gauthier V Federal S.S. Board 65 F Supp 314~~

(2)(A) The number of an individual's benefit computation years shall be equal to the number of elapsed years reduced by five years of lowest earnings excluding the year 1960 (in which he attained age 65) and including the first year after Dec. 31, 1960 in which he was fully insured and had attained age 65, with absence of any disability claim.

Pursuant to the 1960 and 1961 Social Security Law Amendments, the plaintiff attained age 65 in 1960 and filed an application in 1961 for social security benefits and was awarded \$50 monthly benefits in 1962 retroactive to October 1960. However at a later period, plaintiff was awarded \$69 retroactive to October 1960

Based on statutory regulations of the Social Security Administration as shown on exhibit A 18, the benefit computation years beginning 1951 and the elapsed years to and including 1961, excluding the year 1960 (attained age 65) minus 5 years of lowest wage earnings, the total of wages as credited on the records of Secretary as shown on exhibit A 18.

The total of wages on page 10 of this brief shows \$8891.

Formula: 
$$\frac{\text{Total wages}}{\text{divisor}} = \frac{\$8891}{60 \text{ mos.}} - \$148 (\text{average monthly wage})$$

which converts to PIA of \$89, the monthly benefit.

The plaintiff has eliminated the checks indicated wages for 1958 which should be totalled with wages, but the objective is to eliminate controversy.



Exhibit marked A 11 in transcript (14-17) is a 1099 Treasury Form indicating that plaintiff was paid \$806 by Charles Realty Corp. during 1960, but since the commission wages were earned in 1959, due to installment payment on contract (plaintiff did not work in 1960) therefore the \$806 should be credited to 1959.

If the records are erroneous in several respects and the claimant has documentary evidence to support his allegation that such Secretary records are erroneous and further that some records are omitted from the Secretary records then this claimant requests court action to correct errors apparent on the face of the records. To include wages paid during any period to an individual by an employer if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period in accordance with the S.S. Act.

Sec 205 as amended Sec 405 Title 42 U.S. Code  
Sec. 1395 Title 42 U.S. Code.

Past due Underpayment of Monthly Benefits, the difference between \$69 monthly and \$89 monthly and the periods of time in which the monthly benefits were received including the Social Security cost of living increases are in table form on page 11 of this brief.

The question of past due underpayments pursuant to Social Security Law Title 42 U.S. Code Sec. 205(b) 20(CFR) 404.503.

### CONCLUSION

In the interest of substantial justice, the benevolent purposes and the intent of the Social Security Act and the liberal construction which has been afforded the terms of the statutes governing the Act, the power of the U.S. Appeals Court to consider this case as only the U.S. Court of Appeals has the exclusive remedy to interpret the application of the law to the facts on appeal from the December 10, 1974 Decision and Order of the district court for review of the district court application of the law to the facts in this case.

The doctrine of equal protection of the laws has been firmly recognized as a fundamental and necessary concomitant of the jurisdiction of the Appeals Court in the light of the purposes and clear intent for which the Act was enacted by the Congress.

A liberal construction of the statutes or any part thereof as urged by the plaintiff-appellant would not create barriers, restraints and obstructive matters of form contrary to the clear intent of Congress.

The Appeal Court power with which it was invested cannot be circumscribed by the Order and Decision dated Dec. 10, 1974 by the district court which in effect rescinded the final adjudication of another district court judge who on Oct. 29, 1973 endorsed the Amended Complaint of the same plaintiff on the same party on the same facts on the same issue.



Nowhere in the Social Security Statutes is there any express prohibition against the right of the Appeal Court to reconsider or review a case at any time to promote the ends of justice.

It should be emphasized that the decision appealed from herein did not reopen a closed case; the district court rescinded the decision of another district court which had adjudicated the years 1958, 1959 and 1960 as an existing fact on the transcript and in possession of the defendant, Secretary of HEW, head of the Appeals Council of Social Security Administration; said documentary material evidence forwarded to the Appeals Council by invitation of the Appeals Council as recorded in the transcript.

The evidentiary matter on pages 10 and 11 of this brief establish the absence of a genuine issue. The facts on pages 10 and 11 are inscribed upon the official record supplied by the Secretary of HEW through the Payment Center in New York on August 27, 1974. (exhibit A 20 and A 21). This data is an undisputed fact.

The credited and posted wage earnings of the plaintiff, on the records of the Secretary, for the benefit computation years from 1951 to 1961 is an undisputed fact.

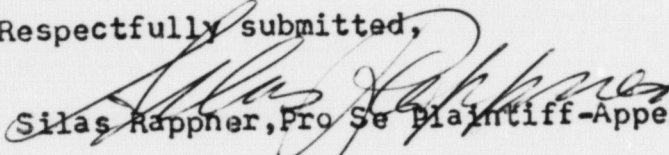
Plaintiff and the defendant, Secretary of HEW, both agree on the computation method to obtain the primary insurance amount which is equal to the old age monthly benefit pursuant to the Statutes of the Social Security Act and Code of Federal Regulations governing the Social Security Administration. This is an undisputed fact.

Plaintiff and the defendant, Secretary of HEW, both agree as to the Social Security Law Statutes and the Code of Federal Regulations governing past due underpayment to a fully insured living, old-age insurance beneficiary with absence of any disability claim. This is an undisputed fact.

The burden of proof shall be on the Secretary of HEW in all proceedings to sustain his assertions contained in his final transcript which indicates that he had exhausted all administrative remedies.

5 U.S.C. Par. 701-704.

Respectfully submitted,

  
Silas Rappner, Pro Se Plaintiff-Appellant

90 La Salle Street

New York, New York 10027



APPENDIX

"A"

DISTRICT COURT DECISION

OF

DECEMBER 10, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

SILAS RAPPNER,

:

Plaintiff, :

- against - :

MEMORANDUM DECISION  
AND ORDER

CASPER WEINBERGER, Secretary, :  
Department of Health, Education :  
& Welfare, Social Security :  
Administration, :

73 Civ. 598 Pro Se

Defendant. :

:

-----x

APPEARANCES:

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Pro Se  
90 La Salle Street  
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PAUL J. CURRAN  
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By: V. Pamela Davis  
Assistant United States Attorney

HENRY F. WERKER, D. J.

Plaintiff, pro se, brings this action pursuant to  
Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g),  
to review a final determination of the Secretary of the  
Department of Health, Education and Welfare that the plaintiff  
was not entitled to an increase in his retirement insurance



benefits. Both parties have moved for summary judgment.<sup>i</sup>

On March 24, 1962 the plaintiff was awarded a monthly benefit of \$50 retroactive to October, 1960. Because of additional earnings in 1961, the benefits were recomputed and a determination made that plaintiff was entitled to \$69 a month. Beginning in 1969 the plaintiff alleged that he had additional earnings during the years 1942, 1943 and 1944 which would entitle him to a greater monthly benefit. For the next several years plaintiff and the Social Security Administration engaged in a series of meetings and hearings which culminated on November 21, 1972 when the Appeals Council of the Social Security Administration concluded that plaintiff was not entitled to an increase in benefits.

The basis of plaintiff's claim was that during World War II he had been employed by certain prime contractors of the United States Government and had worked for them in Canada on the building of the Alaskan Highway between Dawson Creek, Northwest Territory, and Fairbanks, Alaska. Plaintiff was hired in New York City but the work was performed in Canada. The employers were "non-reporting" companies who did not deduct FOAB tax from the plaintiff's wages but apparently did deduct \$15 as a "token" which plaintiff alleges was for FOAB tax.

A reading of the entire transcript of the proceedings including the Appeals Council decision on pages 5A - 10 shows that the Council was presented with and considered all of the evidence submitted by the plaintiff as to his earnings during

1942 to 1944. The Appeals Council made specific findings and conclusions that under Section 210 of the Social Security Act and Section 403.803 of the Social Security Regulations No. 4, 20 C.F.R. 403-803, both of which were in effect during the applicable period, the employment of the plaintiff in Canada was not "covered" employment under the Social Security Act and that plaintiff was not entitled to any old age insurance benefits from that employment.

The plaintiff also alleged that there were treaties and agreements between the United States and Canada (although he cited no specific treaty or agreement) which would classify his employment as being on United States soil and thereby entitle him to Social Security benefits. The Appeals Council found that although there were agreements relating to unemployment insurance provisions, "[t]here were no treaty provisions, however, which would subject employment in Canada to coverage under Title II of the Social Security Act." Transcript at 9. See also Transcript at 239 - 256.

Under Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), "the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . . ." See Richardson v. Perales, 402 U.S. 389 (1971); NLRB v. Walton Mfg. Co., 369 U.S. 404 (1962); Mann v. Richardson, 323 F. Supp. 175, 177 (S.D.N.Y. 1971). Based on a review of the entire record, the court is satisfied that the findings of the Appeals Council as to the employment of the plaintiff during 1942 - 1944 and his ineligibility for



any Social Security benefits from that employment were based on substantial evidence and were proper.

The plaintiff also argued before the Appeals Council that the method of computation used to calculate his benefits under Section 215 of the Social Security Act was improper. The Appeals Council in its opinion examined the two alternative methods of computation under section 215 and concluded that the method using earnings in the years after 1950 and including 1961 yielded a higher primary insurance amount and that the monthly benefit of \$69 was correct. The calculations made by the Appeals Council were based on the finding that the wages credited to the plaintiff for the years after 1950 and including 1961 totaled \$7,860.88. Plaintiff now contends that the Secretary's records are in error since they understate his wage earnings for the years 1958 and 1959. During this time the plaintiff alleges he was employed as a full time licensed commission salesman for the Charlex Realty Corp. and that certain commissions earned by him are not reflected in the Secretary's records. In addition, the plaintiff claims that the Secretary's record of earnings for the year 1960 is also in error since part of the wages reported for that year were in fact commissions earned in 1959.

The transcript of the proceedings on pages 11, 14, and 16 - 21 does show some evidence that the plaintiff's claim as to his 1958 and 1959 earnings was before the Appeals Council. The Appeals Council did not consider this issue,

undoubtedly because the plaintiff did not raise the issue either before the hearing examiner or the Appeals Council. Although this Court cannot proceed de novo, it does have authority to review the entire record and consider all the evidence presented. See, e.g., Covo v. Gardner, 314 F. Supp. 894 (S.D.N.Y. 1970). Plaintiff's alleged differences with the Secretary's records can be summarized as follows:

	<u>Earnings Record</u>	<u>Plaintiff's Claim</u>
1951	\$ 777	\$ 777
1952	\$ 781	\$ 781
1958	\$ 860	\$1495
1959	\$1606	\$2487

The amount claimed by the plaintiff in 1959 would include commissions which he alleges were improperly included in his 1960 earnings. The four years indicated are the alleged four years of highest earnings (benefit computation years) for purposes of calculating the primary insurance amount.

The court pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) <sup>2</sup> remands this case to the Secretary for the purpose of taking additional evidence and making findings as to: (1) the correct amount of wages that should be credited to the plaintiff for the years 1958, 1959 and 1960; (2) a recomputation, if needed, of the primary insurance amount and monthly benefit due to the plaintiff.

Due to the age of the plaintiff and the length of time that he has been prosecuting his appeal, it is the opinion of the court that the interests of justice would be best served by requiring that a new hearing be held, for the

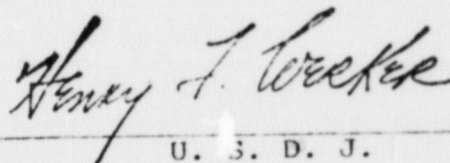


( purposes described above, not later than January 31, 1975, and that the plaintiff should be notified at least twenty-one (21) days prior to the date of the hearing so that he may submit any relevant evidence that he has. At the conclusion of the hearing, the Secretary should render his decision as expeditiously as possible and should send a copy of his final determination to this court.

The findings of the Secretary as to the plaintiff's claim for increased benefits due to wages earned during 1942-1944 are affirmed. The case is remanded for additional findings as to the 1958, 1959 and 1960 wages as outlined above.

SO ORDERED.

(  
Dated: New York, New York  
December 10, 1974

  
\_\_\_\_\_  
U. S. D. J.

SILAS RAPPNER v. CASPER WEINBERGER, Secretary, Department of Health, Education and Welfare, Social Security Administration.

73 Civ. 598 Pro Se

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NOTES

1. Plaintiff also moves to "strike" the defendant's answer. In view of the fact that I have reached the merits of the action on the summary judgment motions it is not necessary to discuss plaintiff's motion to strike.
2. The Act provides that the court may "at any time, on good cause shown, order additional evidence to be taken before the Secretary . . . ."



APPENDIX

"B"

RELEVANT PARTS OF TRANSCRIPT

CLAIMANT: No, sir. I am not qualified to act as my own attorney.

HEARING EXAMINER: So why are you raising exceptions to the law if you don't know what you are talking about?

CLAIMANT: Because I have made sufficient research on my own to indicate that there is an exception to the law, but I'm not qualified to present it because I do not have sufficient knowledge of the law, therefore, I'm entitled to a day in court to be properly represented, and I make the third request, one in writing, certified registered mail, one over the phone, and the third request in person. I hope that the Hearing Examiner will grant me this because based on impartiality I'm entitled to a hearing represented properly by an attorney.

HEARING EXAMINER: Well, there's a serious question as to whether you are entitled to a hearing in the first instance because it's been many years since this 42 and 43 years are involved. There's a question as to whether you are entitled to any hearing. Your case can be dismissed without a hearing.

CLAIMANT: I take exception to the statement made by the Hearing Examiner because there are rulings in the Federal Courts that were configured in negligence on the part of the Social Security and it can be proven here that the member of the public shall not be penalized and we hope to present these laws before you by a proper attorney and I for the fourth time make a request for one year's - one week's adjournment.

HEARING EXAMINER: Well, make your mind up. Do you want a year's adjournment or one week?

CLAIMANT: I want one week's adjournment, sir.



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consideration to whatever developments have occurred since with respect to changing any relevant provisions of the Act.

CLAIMANT: I'd like to submit one, two, three, four, five, six exhibits. Shall I mark them?

MR. ALLEN: No, they don't have to be marked. They'll be considered as part of your argument.

CLAIMANT: I believe it's all pertinent to the case and, uh, I think the whole crux of my case depends upon the--and, uh, Instead I have a law which was given me by a lawyer who works for social security and I'm going to send you this law since it was taken from a law book--made a copy of it for me.

MR. ALLEN: Well, I would suggest you do so within the next fifteen days.

CLAIMANT: You might find this an unusual case which allowed a figure before 1950. I know your method of figuring. I learned something about it recently and in rare cases you are allowed to figure before and after.

MR. ALLEN: We'll receive any evidence you wish to submit. I would suggest you send it within the next fifteen days, Mr. Rappner.

CLAIMANT: I'll do it before that. That's the whole crux of the case and if my method--if this method of figuring is right then I'm entitled to a little more money--not much but a little more. And if I don't get it I'll still go on. Thank you very much for the invitation to be here and I certainly appreciate it and I hope I haven't taken too much of your time. Now, I'll close my case right here and now.

MR. ALLEN: Thank you, Mr. Rappner. Mr. Monk, do you have any questions?

MR. MONK: I have no questions.

- 7 -

MR. ALLEN: Well, I think perhaps, you ought to get into argument and then bring up these points as you go along, sir. So, we are now pleased to listen to the argument.

CLAIMANT: Gentlemen of the Appeals Board, there's very little I can offer to you that you've already not heard, except I'm going to read something from the decision of the Federal Court pertaining to a method of computation in the case of Ewing-Gardner, Ohio - 185 to be as follows: computing benefits in benefit computing years. I'm going to abbreviate this thing.

MR. ALLEN: Now, before you go further, I did overlook doing one thing, since this is your claim and since it's quite possible that you may make some statement of evidentiary value which is not already of record, I believe it's probably advisable to have you sworn in as a potential witness. Will you raise your right hand, please?

(The claimant being first duly sworn testified as follows.)

MR. MONK: Would you identify that case for me again, please?

CLAIMANT: I'm going to offer in evidence and present it to you, a piece of paper---

MR. MONK: You want to present the document?

CLAIMANT: Yes, sir. I'm going to mark it as Exhibit A.

MR. ALLEN: May I see it, Mr. Rappner?

CLAIMANT: Yes, sir.

MR. ALLEN: Because, you see, sir, if you offer a decision of a court in order to support your argument we will not receive it in evidence, we will note the reference to it and read the decision, it's not necessary to





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
NORTHEASTERN PROGRAM CENTER  
FLUSHING, NEW YORK 11368

REFER TO 130-14-0244 A

A16

BUREAU OF RETIREMENT  
AND SURVIVORS INSURANCE

August 28, 1974

\* Silas Rappner  
90 LaSalle St 12FL  
New York N Y 10027

20 (CFR) 404.503

*Past due underpayments is the  
difference between benefits received  
and benefits that state regulations  
rule should have been received.*

Dear Mr. Rappner:

In accordance with your request, of August 27, 1974 at our Northeastern Program Center, Flushing, N.Y., attached is a list of all checks that were issued to you from January 1965 to the current month.

Please note that checks are issued on the 3rd day of the following month unless otherwise noted.

<u>Month</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>
January	\$69.00	\$73.90	73.00	\$73.00	\$81.90
February	69.00	73.90	73.00	82.90	81.90
March	69.00	73.90	73.00	81.90	81.90
April	69.00	73.90	73.00	81.90	10.90
May	69.00	73.90	73.00	81.90	81.90
June	69.00	**70.90	73.00	81.90	81.90
July	69.00	70.90	73.00	81.90	81.90
August	69.00	70.90	73.00	81.90	81.90
	***39.20				71.00 *
September	73.90	70.90	73.00	81.90	81.90
October	73.90	70.90	73.00	81.90	81.90
November	73.90	70.90	73.00	81.90	81.90
December	73.90	70.90	73.00	81.90	81.90

\* Difference due for April 1969

\*\* Medical Insurance withheld from check from June 1966 on

\*\*\* Increase due for January 1965 through August 1965

Silas Rappner

8/28/74

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<u>Month</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
January	\$81.90	\$93.50	\$103.10	\$124.70	\$124.20
February	81.90	93.50	103.10	124.70	124.20
March	94.80	93.50	103.10	124.70	133.40
	*25.80				
April	94.80	93.50	103.10	124.70	133.40
May	94.80	103.40	103.10	124.70	133.40
		**39.60			
June	93.50	103.10	102.90	124.20	138.20
July	93.50	103.10	102.90	124.20	138.20
August	93.50	103.10	102.90	124.20	
September	93.50	103.10	124.70	124.20	
October	93.50	103.10	124.70	***124.90	
November	93.50	103.10	124.70	124.20	
December	93.50	103.10	124.70	124.20	

\* Increase due for January 1970 through February 1970

\*\* Increase due for January 1971 through April 1971

\*\*\* Includes 70 cents medical insurance rollback

Sincerely yours,

*Pasquale F. Caligiuri*

Pasquale F. Caligiuri  
Regional Representative



TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS

I (Primary insurance benefit under 1939 Act, as modified)		II (Primary insurance amount under 1967 Act)	III (Average monthly wage)		IV (Primary insurance amount)	V (Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
	\$16.20	\$55.40 or less		\$76	\$64.00	\$96.00
\$16.21	16.84	56.50	\$77	78	65.00	97.50
16.85	17.60	57.70	79	80	66.40	98.60
17.61	18.40	58.80	81	81	67.70	101.60
18.41	19.24	59.90	82	83	68.90	103.40
19.25	20.00	61.10	84	85	70.30	105.60
20.01	20.64	62.20	86	87	71.60	107.40
20.65	21.28	63.30	88	89	72.80	109.20
21.29	21.88	64.50	90	90	74.20	111.30
21.89	22.28	65.60	91	92	75.50	113.30
22.29	22.68	66.70	93	94	76.80	115.20
22.69	23.08	67.80	95	96	78.00	117.00
23.09	23.44	69.00	97	97	79.40	119.10
23.45	23.76	70.20	98	99	80.80	121.20
24.21	24.20	71.50	100	101	82.30	123.50
23.77	24.60	72.60	102	102	83.50	125.30
24.61	25.00	73.80	103	104	84.90	127.40
25.01	25.48	76.10	105	106	86.40	129.60
25.49	25.92	76.30	107	107	87.80	131.70
25.93	26.40	77.50	108	109	89.20	133.80
26.41	26.94	78.70	110	113	90.60	135.90
26.95	27.46	79.90	114	118	91.90	137.90
27.47	28.00	81.10	119	122	93.30	140.00
28.01	28.68	82.30	123	127	94.70	142.10
28.69	29.25	83.60	125	132	96.20	144.30
29.26	29.68	84.70	133	136	97.50	146.30
29.69	30.36	85.90	137	141	98.80	148.20
30.37	30.92	87.20	142	146	100.30	150.50
30.93	31.36	88.40	147	150	101.70	152.60
31.37	32.00	89.50	151	155	103.00	154.50
32.01	32.60	90.80	156	160	104.50	156.80
32.61	33.20	92.00	161	164	105.80	158.70
33.21	33.88	93.20	165	169	107.20	160.80
33.89	34.50	94.40	170	174	108.60	162.90
34.51	35.00	95.60	175	178	110.00	165.00
35.01	35.80	96.80	179	183	111.40	167.10
35.81	36.40	98.00	184	188	112.70	169.10
36.41	37.08	99.30	189	193	114.20	171.30
37.09	37.60	100.50	194	197	115.90	173.40
37.61	38.20	101.60	198	202	116.90	175.40
38.21	39.12	102.90	203	207	118.40	177.60
39.13	39.68	104.10	208	211	119.80	179.70
39.69	40.33	105.20	212	216	121.00	181.50
40.34	41.12	106.50	217	221	122.50	183.80
41.13	41.76	107.70	222	225	123.90	185.90
41.77	42.44	108.90	226	230	125.30	188.00
42.45	43.20	110.10	231	235	126.70	190.10
43.21	43.76	111.40	236	239	128.20	192.30
43.77	44.44	112.60	240	244	129.50	195.20
44.45	44.88	113.70	245	249	130.80	199.20
44.89	45.60	115.00	250	253	132.30	202.40
		116.20	254	258	133.70	206.40
		117.30	259	263	134.90	210.40
		118.60	264	267	136.40	213.60
		119.80	268	272	137.80	217.60
		121.00	273	277	139.20	221.60
		122.20	278	281	140.60	224.80
		123.40	282	286	142.00	228.80
		124.70	287	291	143.50	232.80
		125.80	292	295	144.70	236.00
		127.10	296	300	146.20	240.00
		128.30	301	305	147.60	244.00
		129.40	306	309	148.90	247.20
		130.70	310	314	150.40	251.20
		131.90	315	319	151.70	255.20
		133.00	320	323	153.00	258.40
		134.30	324	328	154.50	262.40
		135.50	329	333	155.90	266.40
		136.80	334	337	157.40	269.60
		137.90	338	342	158.60	273.60
		139.10	343	347	160.00	277.60
		140.40	348	351	161.50	280.80
		141.60	352	356	162.80	284.80
		142.80	357	361	164.30	288.80
		144.00	362	365	165.60	292.00
		145.10	366	370	166.90	296.00
		146.40	371	375	168.40	300.00
		147.60	376	379	169.80	303.20
		148.90	380	384	171.30	307.20
		150.00	385	389	172.50	311.20
		151.20	390	393	173.90	314.40
		152.50	394	398	175.40	318.40

A 10



# CHARLEX REALTY CORPORATION

300 CHANCELLOR AVENUE • NEWARK, NEW JERSEY

September 2, 1959

Mr. Silas Rappner  
550 5th. Avenue  
New York, New York

Dear Sy:

In reference to our telephone conversation yesterday, regarding the additional commission due you on house sales, I would appreciate it very much if you would forward to me any information you have concerning the sale of the homes you mentioned such as the name of the party, etc.

I have made a thorough search of our files, and can find no record of the sale of these homes.

If you could forward the necessary information to me, I could check it out, and send you a disposition.

Sincerely,

CHARLEX REALTY CORPORATION

*Joseph Greenblatt*

Joseph Greenblatt  
Assistant to the Controller

JG/pml

EXHIBIT

A ~~11~~ 15

FORM 1099  
U.S. Treasury Department  
Internal Revenue Service

## U.S. INFORMATION RETURN FOR CALENDAR YEAR 1960

1960

### KIND AND AMOUNT OF INCOME PAID

1. Salaries, Fees, Commissions, or Other Compensation. Do not include amount reported on Form W-2	2. Interest on Notes, Mortgages, Bank Deposits, Etc.	3. Rents and Royalties	4. Annuities, Pensions, and Other Fixed or Determinable Income	5. Foreign Items (\$600 or more)	6. Dividends (\$10 or more) (For Exceptions See Instructions)	7. Patronage Dividends, Rebates, or Refunds (\$100 or more)
\$ 806.30						

TO WHOM PAID (Print full name and home address)

Mr. Silas Rappner  
90 Lasalle Street  
New York, N.Y.

BY WHOM PAID (Name, address, and employer's identification number)

CHARLEX REALTY CORP.  
300 Chancellor Ave.  
Newark 12, N. J.

(If payee is an employee, show his social security account number, if any. If employee is a married woman, also show name of husband.)



## EARNINGS RECORD P.I.A. DETERMINATION

ACCOUNT IDENTIFICATION										PERTINENT DATES										BDPA SIGNALS										BLOCK NUMBER		SV
ACCOUNT NUMBER	NAME	SSN	DATE OF BIRTH	FILIN	TH	ONSET	ELECTION REQUEST	SCIP	CA	ED	X	NY	CR	IND	SE	AG	IN	FB	DESK	DAY CODE	SEQ NO	EDF CODE	CASE CODE	DE	101	BLOCK NUMBER	SV					
14 0244	REG HAPPH	M	08 02 45	02 PP 71																	100	17676	16 71		01	76961	KV					
ESTABLISHED DISABILITY PERIOD																																

LAG INFORMATION										MILITARY SERVICE																				
PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	PERIOD	AMOUNT USED	TYPE	

QUARTER OF COVERAGE TESTS										GC AND EARNINGS TOTALS																			
REQUIRED GC	HAS GC	SIMP GC	MAX GC	C/I	FIRST	DISABILITY MET	NOT	TOT	WAGE GC	TOTAL EARNINGS	TOTAL EARNINGS																		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30

THE BENEFIT DATA IN BLOCKS 2, 4 AND 5 ARE CORRECT ACCORDING TO THE LAW ON THE BASIS OF THE RECORDS OF THE SOCIAL SECURITY ADMINISTRATION AND RECORDS RECEIVED FROM THE RAILROAD RETIREMENT BOARD.

WILLIAM E. HANNA, JR.  
DIRECTOR

PRIOR ACTION ☐ RSI ☐ DISABILITY

TYPE OF ACTION BY H. McPhee  
DATE CURR BLKS 225

UDPA REMARKS  
A CLAIM STATUS UNIT REC

EARNINGS	U	GC/SW	YR	EARNINGS	U	GC/SW	SE	YR	EARNINGS	U	GC/SW	SE	AG	DMW	YR	EARNINGS	U	GC/SW	SE	AG	DMW
528.04			46					4200							64	350.40					
528.04			47					56							65	1043.76	H	CCCN			
528.04			48					57							66	513.25					
528.04			49					58	860.00	X	SSSS				67	16.00					
528.03			50					59	1606.00	H	SSSS				68	39.60					
528.03			51	777.50			0	60	275.00						69	786.86					
528.03			52	781.38			0	61	5756.00	H	CCCN				70						
528.03			53	763.89			0	62	499.35	X	CCCN				71						
528.03			54					63							72						

PERTINENT RRB INFORMATION										GROSS RESIDUAL																				
NAME	DB	YLW	1937 TO DATE	1937 - 1946	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION	SM	COMPENSATION

BENEFIT COMPUTATIONS										REDUCED BENEFITS									
TYPE	FIRST BASE YR OR SD	LAST BASE YR OR CD	DIVIDEND	DISAB BASE YRS EXCL	ELAPSED PD OR DO YRS	DM	I/Y	MOS	INCL	PIA	LUMP SUM	FIRST ENT MO	RED MOS	RETRO	CURR				
US 65	1951	1964	8105.11		51-60	60				47.50H		02/70							
US 67	86.40		NS 00 ELG		68.90					US 00 ELG		71.60							

EXHIBIT A18

165



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BALTIMORE, MARYLAND 21235

170

ITEMIZED STATEMENT OF EARNINGS

Shown below are the source and amounts of earnings now recorded on account

130-14-0244 for JANUARY 1942 THRU DECEMBER 1943

YEAR	JAN-MARCH	APRIL-JUNE	JULY-SEPT	OCT-DEC	TOTAL
GAFULCO COMPANY INC 597 MADISON AV NEW YORK, NY 10022					
1942			334.00		\$ 334.00
1942		49.50			\$ 49.50
JOHN A JOHNSON CONTRACTING CORP & MT VERNON CONTRACTING CORP GENEVA, NY					
1942			<i>Employer in 1942</i> <i>Wages reported →</i> 747.01		\$ 747.01
BRANN & STUART CO 1447 BROAD ST STA BLDG PHILADELPHIA, PA 03					
1942				285.47	\$ 285.47
1942				150.40	\$ 150.40
1942				27.89	\$ 27.89

PAGE 01

*18/04*





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL SECURITY ADMINISTRATION  
BALTIMORE, MARYLAND 21235

171

ITEMIZED STATEMENT OF EARNINGS

Shown below are the source, and amounts of earnings now recorded on account

130-14-0244 for JANUARY 1942 THRU DECEMBER 1943

YEAR	JAN-MARCH	APRIL-JUNE	JULY-SEPT	OCT-DEC	TOTAL
------	-----------	------------	-----------	---------	-------

GEO M BREWSTER & SON INC  
190 MCCRE ST  
HACKENSACK, NJ 07601

1943	45.00				\$ 45.00
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METCALFE & HAMILTON  
CONSTR CO & KANSAS CITY BRIDGE CO  
EDMONTON, ALBERTA CANADA

1943	<i>Employee in 1943 wages reported</i>			108.00	700.88	\$ 808.88
------	--	--	--	--------	--------	-----------

BOEING AIRCRAFT CO  
200 W MICHIGAN ST  
SEATTLE, WASH

1943				159.41	\$ 159.41
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PAGE 02 END

*18(11)=*

COPY RECEIVED  
*Paul J. Curran* (WS)  
UNITED STATES ATTORNEY  
3/3/75